FILED
MAY 29 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NO. [redacted]/163

FRED L. SHUTTLESWORTH,

Petitioner,

—v.—

CITY OF BIRMINGHAM,

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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Table of Cases

	PAGE
Anderson v. Alabama, 364 U.S. 877	15
Boynton v. Virginia, 364 U.S. 454	10, 12
Cole v. Arkansas, 333 U.S. 196	8, 9
Davis v. Wechsler, 269 U.S. 22	15
DeJonge v. Oregon, 299 U.S. 362	9
Garner v. Louisiana, 368 U.S. 157	11
Gayle v. Browder, 352 U.S. 903	12
Gober v. Birmingham, 31 U.S. Law Week 3385	15
Henry v. United States, 361 U.S. 98	10
Houston v. State, 265 Ala. 588, 93 So. 2d 439	14
Jemison v. Alabama, 270 Ala. 589, 120 So. 2d 751	14
Lanzetta v. New Jersey, 306 U.S. 451	13
Patterson v. Alabama, 294 U.S. 600	15
Redwine v. State, 36 Ala. App. 560, 61 So. 2d 715	14
Shuttlesworth v. Birmingham, 31 U.S. Law Week 4481	15
Staub v. Baxley, 355 U.S. 313	15
Taylor v. Louisiana, 370 U.S. 154	10, 11, 12
Thompson v. Louisville, 362 U.S. 199	11, 12, 13
Williams v. Georgia, 349 U.S. 375	14, 15
Wright v. Georgia, —— U.S. ——, 31 U.S. Law Week 4487	11, 12, 13, 15

Other Authorities

Douglas, "Vagrancy and Arrest on Suspicion," 70 Yale Law Journal 1	10

INDEX TO APPENDIX

	PAGE
Opinion of the Alabama Court of Appeals	1a
Order and Judgment of the Alabama Court of Appeals	4a
Order of Denial of Rehearing by the Alabama Court of Appeals	5a
Opinion of the Supreme Court of Alabama	6a
Order of the Supreme Court of Alabama Striking Petition for Certiorari	7a
Order of Denial of Rehearing of the Supreme Court of Alabama	8a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. .....

FRED L. SHUTTLESWORTH,

Petitioner,

—v.—

CITY OF BIRMINGHAM.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

Petitioner prays that a writ of certiorari issue to review the judgment of the Alabama Court of Appeals, entered in the above entitled case on October 23, 1962, rehearing of which was denied on November 20, 1962. A petition for certiorari was stricken by the Supreme Court of Alabama on December 20, 1962, and rehearing was denied February 28, 1963.

Citation to Opinions Below

The opinion of the Alabama Court of Appeals (R. 59) is reported at 149 So. 2d 921 and is set forth in the appendix hereto, *infra*, p. 1a. The opinion on denial of certiorari by the Supreme Court of Alabama (R. 68) is reported at 149 So. 2d 923 and appears in the appendix, *infra*, p. 6a.

Jurisdiction

The judgment of the Alabama Court of Appeals (R. 58) was entered on October 23, 1962, *infra*, p. 4a. The Application for Rehearing was overruled on November 20, 1962 (R. 62), *infra*, p. 5a.

A Petition for Writ of Certiorari filed in the Supreme Court of Alabama was stricken on December 20, 1962 (R. 70), *infra*, p. 7a; and Application for Rehearing was overruled on February 28, 1963 (R. 70), *infra*, p. 8a.

The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1257 (3), petitioner having asserted below, and claiming here, deprivation of rights, privileges and immunities secured by the Constitution of the United States.

Questions Presented

1. Whether petitioner was denied due process of law when he was charged, tried and convicted under a law prohibiting interfering with a police officer, but the conviction was affirmed only on the ground that he had committed another crime for which the same sentence might be imposed, i.e., assault, even though there had been no accusation or trial on the issue of assault.

2. Whether petitioner was denied due process of law by his conviction on a charge of interfering with a policeman while discharging his legal duties on a record devoid of any evidence of any elements of the crime.

3. Whether petitioner was denied due process where he was convicted under a law which failed to give adequate notice that his conduct was prohibited.

4. Whether there is an adequate non-federal ground to support the judgment below where the Alabama Court of Appeals (from whose judgment the petition seeks a writ of certiorari) ruled against petitioner on the merits, but the Alabama Supreme Court struck a petition for writ of certiorari that sought to invoke its discretionary jurisdiction on the ground that the petition was on the wrong size paper.

Constitutional and Statutory Provisions Involved

1. This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. This case also involves Section 856 of the General City Code of Birmingham.

> "Any person who knowingly and wilfully opposes or resists any officer of the city in executing, or attempting to make any lawful arrest, or in the discharge of any legal duty, or who in any way interferes with, hinders or prevents, or offers, or endeavors to interfere with, hinder or prevent such officer from discharging his duty, shall, on conviction be punished as provided in section 4."

and Section 825 of the General City Code of Birmingham,

> "Any person who commits an assault, or an assault and battery, upon another person, shall, on conviction, be punished as provided in section 4."

Statement

Petitioner was arrested May 17, 1961, at the Greyhound Bus Station in Birmingham, Alabama and charged with violating Section 856, General City Code of Birmingham. The complaint (R. 1B) stated that petitioner Shuttlesworth:

> . . . did knowingly and wilfully interfere with, hinder, or prevent a police officer of the City of Birmingham; namely, Jamie Moore, Police Chief for the City of Birmingham, in the discharge of his legal duty in that said defendant did knowingly and wilfully place himself between said officers and a group of people commonly called 'freedom riders' when said people were being placed in protective custody by said officer, and said defendant did knowingly and wilfully refuse to move out of the way of said police officer after being so ordered, contrary to and in violation of Section 856 of the General City Code of Birmingham of 1944.

Petitioner Shuttlesworth went to the Greyhound Station about two or three o'clock to catch a bus to Montgomery, Alabama (R. 40). He was in a group of "[t]welve or more" persons from Nashville, Tennessee and "six persons from Birmingham," all of whom had tickets to travel to Montgomery (R. 23, 25, 40). They were unable to take the bus which left "a little after 2 or 3" because the scheduled trip was cancelled when the driver refused to drive (R. 40). Shuttlesworth and his friends decided to wait for another bus which was due to leave "around 5 o'clock" (R. 40).

Around 4 P. M. (R. 15) the Chief of Police decided to arrest the group and take them into "protective custody" (R. 14, 15). A crowd, described by one officer as "belligerent" (R. 26) and by another as not making a great deal of noise (R. 30), was gathered outside the station.

The group of travelers was standing on the platform of the bus station preparing to board a bus (R. 21, 36) when the Chief told them he was placing them under arrest and in the "protective custody" of the City (R. 20, 21). All, except petitioner, were later released without charges being placed against them (R. 17).

The Chief, who ordered Shuttlesworth's arrest (R. 14), testified that when he told the group they were under arrest, Shuttlesworth walked up to him and he told Shuttlesworth to leave the station (R. 13, 14). Shuttlesworth "walked around and then got between me and some of those people I was talking to" (R. 14). The Chief again asked Shuttlesworth to leave and he replied that "if those people have to be arrested, why, he wanted to be arrested also" (R. 14). Chief Moore further testified that, "[h]e was in my way and he was asking what was happening, what was taking place . . ." (R. 16).

The testimony of the other witnesses both for the City and for Shuttlesworth does not vary substantially. Several witnesses testified that Shuttlesworth made the statement that he wanted to remain with the group (R. 20, 28, 41, 50). Shuttlesworth further testified that he never stood between the Chief and the group (R. 42). Another police officer testified that Shuttlesworth was standing alone when the Chief of Police made his announcement to the group and that "[h]e was there about the same place" when the arrest was made (R. 34). Another police officer testified that after the others were placed under arrest Shuttlesworth walked along with them toward the patrol wagon (R. 32) before he, too, was arrested and taken away in a police car.

Shuttlesworth was entirely peaceful. The Chief testified that, "he didn't put his hands on any one" (R. 16), and that he was not profane or loud (R. 17). His attitude was not

"pugnacious" (R. 22). He did not verbally refuse to leave but simply remained where he was (R. 27). Neither he nor the Chief raised his voice (R. 32). He did not resist arrest (R. 32), nor did he do anything to stop his friends from being arrested (R. 32).

There is nothing in the record to indicate why the Chief of Police wanted to place all of the other travellers under arrest for their protection but wanted Shuttlesworth to leave the station.

Shuttlesworth was tried and convicted of violating Section 856 of the General City Code of Birmingham in the Circuit Court of Jefferson County, Alabama on December 5, 1961 and was sentenced to pay a fine of $100 and costs (R. 7). On failure to pay the fine, he was sentenced to 52 days of hard labor (R. 8). He was sentenced to an additional term of 180 days of hard labor (R. 8), and 16 days for costs (R. 8).

The Court of Appeals of Alabama affirmed the conviction on October 23, 1962. The Court took notice of Shuttlesworth's argument that the Chief of Police was not in the discharge of any legal duties, but yet the argument "can avail the appellant nothing, because his conduct was also that prohibited by §825 of the City Code" dealing with the crime of assault (R. 60). The Court found no error in the conviction for interfering with the Police Chief since under its views of the evidence, petitioner "could have been clearly convicted of a simple assault" (R. 61). The Supreme Court of Alabama refused to review the conviction on the ground that the petition for certiorari had not been submitted on transcript paper, *infra*, p. 6a.

How the Federal Questions Were Raised and Decided Below

Petitioner filed a motion to quash and demurrer (R. 2-4) which alleged that "the allegations of the information or complaint, and each count thereof are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend" (R. 4) and that Section 856 of the City Code under which the complaint was brought violated the First and Fourteenth Amendments by denying rights of freedom of speech and assembly, liberty without due process of law, and equal protection of the laws; moreover, petitioner charged that the ordinance was so vague as to deny due process of law secured by the Fourteenth Amendment (R. 2-5).

At the close of the City's case (R. 38) and at the end of the trial (R. 52), a motion to exclude was filed alleging that petitioner was merely exercising rights secured by the First and Fourteenth Amendments (R. 6) and on the ground that there was no evidence to support a conviction (R. 6). All of petitioner's motions were overruled (R. 7, 11, 39, 52).

These allegations of constitutional rights were renewed in assignments of error on appeal to the Court of Appeals of Alabama (R. 56). That Court, without discussing the constitutional issues raised, affirmed the conviction (*infra*, 1a, R. 68). It did so by finding that petitioner's conduct amounted to an assault in violation of §825 of the Birmingham City Code.

A petition for certiorari was filed within the prescribed time in the Supreme Court of Alabama and it was denied on the ground that it was not submitted on transcript paper, *infra*, p. 6a.

Reasons for Granting the Writ

The decision below conflicts with applicable decisions of this Court on important constitutional issues.

I.

Petitioner's Conviction Was Affirmed Under a Criminal Statute the Violation of Which Had Not Been Charged, Contrary to the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The disposition of this case by the Court of Appeals of Alabama was in direct conflict with the principals set down by this Court in *Cole* v. *Arkansas*, 333 U. S. 196. Petitioner was charged, tried, and convicted under a complaint which charged that he "did knowingly and wilfully interfere with, hinder, or prevent a police officer of the City of Birmingham; . . . in the discharge of his legal duty," and under an ordinance (§856 Birmingham City Code) which applies to "Any person who knowingly and wilfully opposes or resists an officer of the city in executing, or attempting to make any lawful arrest, or in the discharge of any legal duty . . .".

When petitioner urged to the Alabama Court of Appeals, as he does here, that there was no evidence to sustain a conviction under this charge and ordinance, it recognized the argument but held that his conviction was valid because "his conduct was also that prohibited by §825 of the City Code, which provides for the same degree of punishment as §856, §825 making it an offense against the City for any person to commit an assault" (*infra*, p. 2a, R. 60).

This holding flies in the face of *Cole* v. *Arkansas*, 333 U. S. 196, where the Court reversed a conviction in similar circumstances, stating that (333 U. S. at 201):

> "No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal. . . . It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made. *DeJonge* v. *Oregon*, 299 U. S. 353, 362."

It is submitted that here as in the *Cole* case, *supra*, petitioner was entitled to have his conviction appraised on the case as it was tried in the trial court, i.e., under Section 856, and not in terms of a statute never mentioned in the accusation or considered upon trial of the case.

II.

The Judgment Below Violates the Due Process Clause of the Fourteenth Amendment in That It Rests on No Evidence of Any Interference With an Officer Performing a Legal Duty.

The Alabama Court of Appeals never faced the issue of whether there was evidence to support the charge under §856, i.e., interfering with an officer in the performance of a legal duty. Instead, it bypassed this question and held that petitioner was guilty of an assault under §825, under which Shuttlesworth was not at all charged. But putting aside for the moment that one cannot be convicted for a

charge not made, there was also no evidence upon which petitioner could have been convicted under §856. First, the officers were not in the performance of any legal duty. The persons who were placed in "protective custody" were "freedom riders" (R. 1B), whose right to be free from arrest and prosecution under circumstances like those disclosed in this record is well established in the law. *Taylor* v. *Louisiana*, 370 U. S. 154; *Boynton* v. *Virginia*, 364 U. S. 454. Arresting the riders to place them in "protective custody" cannot be any more valid than an arrest for "suspicion" or "investigation," *Henry* v. *United States*, 361 U. S. 98; cf. Justice Douglas, "Vagrancy and Arrest on Suspicion," 70 Yale Law J. 1, 12-13. In any event, the Alabama Court of Appeals referred to "protective custody" as "the receiving of someone who places himself voluntarily under the protection of a peace officer" (R. 60). There is no showing that that is what happened here. Consequently, assuming that Shuttlesworth "interfered," he was not interfering with the performance of a legal duty of any police officer.

But the record also demonstrates that he did not "interfere." At the time of his arrest Shuttlesworth was waiting along with others to board a bus to Montgomery, Alabama (R. 21, 36). The Chief decided to arrest the entire group except Shuttlesworth.

Any conviction of the petitioner had to result from his words or acts at the time of the arrests. But the evidence was that after the Chief announced that he was arresting the group, he told Shuttlesworth to leave the station (R. 13, 14). Shuttlesworth stated that whatever happened to the group should happen to him (R. 14). In the words of the Chief, "he was asking what was happening, what was taking place . . . " (R. 16). Shuttlesworth

was not disorderly (R. 17, 22) and both he and the Chief spoke quietly (R. 32).

There is testimony that while Shuttlesworth was talking to the Chief, he got between him and the other members of the group (R. 14, 20, 32), although there is evidence to the contrary (R. 34, 42). The police chief further testified that he told Shuttlesworth "to leave the bus station" (R. 14) and "to go—to get out of my way" (R. 14), and he remained where he was (R. 27, 29).

There is no evidence that petitioner through word or action prevented the Chief of Police from carrying out his duties. The evidence, taken in the light most unfavorable to the petitioner is that he stood between the chief of police and the group and did not leave the station when ordered. There is nothing unusual in a person standing face to face with another while talking to him. Nor was there any reason why Shuttlesworth, who had a ticket to Montgomery, Alabama (R. 25, 40), should have left the station. There is no evidence that petitioner's conduct in any way sought to prevent or prevented the police from arresting the other travelers. Neither the travelers nor the petitioner resisted arrest (R. 32).

Certiorari should be granted because it is a "violation of due process to convict and punish a man without evidence of his guilt." *Thompson* v. *Louisville*, 362 U. S. 199, 206; *Garner* v. *Louisiana*, 368 U. S. 157; *Taylor* v. *Louisiana*, 370 U. S. 154. Inquiring of a police officer as to what is happening to one's friends and refusing to leave a bus station where one has a right to be is no evidence of interference with a police officer in the performance of his duties. As the Court recently said, " . . . One cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution." *Wright* v. *Georgia*, —— U. S. ——, 31 U. S. Law Week 4487, 4489.

III.

The Law Under Which Petitioner Was Convicted Is Unconstitutionally Vague as Applied to His Conduct.

No one reading Section 856, Birmingham City Code could know that it makes criminal remaining upon the premises of an interstate bus terminal while holding a ticket contrary to the orders of a police officer to depart. Nor could one be expected to know that this section makes criminal a response such as petitioner gave the policeman upon the order to depart, and upon the officer's arrest of petitioner's companions who similarly held tickets. The Alabama Court of Appeals apparently also was of the view that petitioner's conduct did not violate Section 856, for it, for the first time in the proceedings, was compelled to turn to Section 825 of the City Code which punishes assault to affirm the conviction.

Petitioner's conduct was amply protected by the decisions of this Court. He plainly had a right to remain in the bus terminal notwithstanding the officer's demand that he leave (*Boynton* v. *Virginia*, 364 U. S. 454; *Gayle* v. *Browder*, 352 U. S. 903; *Taylor* v. *Louisiana*, 370 U. S. 154; *Wright* v. *Georgia*, 31 U. S. Law Week 4487); he also had a right to protest the unlawful demand that he leave the terminal and the unlawful attempt to arrest his companions in "protective custody" (*Thompson* v. *Louisville*, 362 U. S. 199, 206; *Wright* v. *Georgia*, *supra*).

The Court below clearly indicated that there was no such thing as "protective custody" under Alabama law without the voluntary consent of one placed in such custody (R. 60). The peaceful inquiry into such an unlawful arrest of one's companions cannot be considered to be an unlawful interference with a policeman performing his

legal duties, for the ordinance plainly fails to warn that such conduct is criminal. Cf. *Thompson* v. *Louisville, supra*, 362 U. S. at 206, citing *Lanzetta* v. *New Jersey*, 306 U. S. 459. As this Court said in *Wright* v. *Georgia*, 31 U. S. Law Week 4487, 4489, " . . . a generally worded statute which is construed to punish conduct which cannot constitutionally be punished is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and constitutionally impermissible applications of the statute."

Certiorari should be granted for the additional reason that the ordinance which Shuttlesworth was convicted of violating is unconstitutionally vague as applied and that due process of law does not permit an appellate court to convict a person of a crime not charged.

IV.

The Fact That the Supreme Court of Alabama Refused to Review Petitioner's Conviction Because His Petition for Certiorari Was Not Filed on "Transcript Paper" Should Not Preclude a Review by This Court of the Substantial Federal Questions Involved.

The fact that certiorari was denied by the Supreme Court of Alabama because review was sought of the Court of Appeals judgment on paper of the wrong size does not preclude review here. The petition for writ of certiorari was filed on ordinary legal cap (8½ x 14 inches) (See R. 63), rather than on Alabama transcript paper (10½ x 16 inches in size) as set forth in Alabama Supreme Court Rule 32. Under Alabama practice in preparing records, legal cap is in some cases used and stapled to the larger size paper. This was done by the Clerk of the Court below with the opinions of the Court of Appeals and the Supreme Court

in preparing this record (R. 59, 68). And under Alabama practice a petition for rehearing need not be filed on the transcript or folio paper. *Redwine* v. *State,* 36 Ala. App. 560, 61 So. 2d 715. Nevertheless, Alabama has the formalistic requirement, which it has frequently enforced (see cases cited in opinion below, R. 68), that such petitions for certiorari must be on the transcript paper under its Rule 32. The State Supreme Court, however, has not been entirely inflexible in regard to this rule. On at least one occasion the Court has proceeded to a consideration of the merits of a case despite the failure to file on transcript paper within the allotted time. In *Houston* v. *State,* 265 Ala. 588, 93 So. 2d 439, the Court said:

> "Subsequent to submission, appellant became aware that the petition was not on transcript paper and requested leave to remedy this defect. In view of this request, we have considered the petition on its merits and find no reason to reverse the judgment of the Court of Appeals. The writ would have been denied had the application not been stricken.
>
> "Petition for writ of certiorari stricken."

While *Houston* v. *State, supra,* is apparently an exceptional case under Alabama law (cf. *Jemison* v. *Alabama,* 270 Ala. 589, 120 So. 2d 751), it nevertheless demonstrates the power of the Supreme Court of Alabama to look at and decide the merits of a case notwithstanding the litigant's failure to use transcript paper. Thus, this is a case where the Court had discretion to review the judgment and refused to exercise it.

In *Williams* v. *Georgia,* 349 U. S. 375, this Court faced a similar problem and ruled that where "the trial court and the state Supreme Court declined to grant Williams' motion though possessed of power to do so under state law . . . [where the] motion was based upon a constitu-

tional objection, and one the validity of which has in principle been sustained here, the discretionary decision to deny the motion does not deprive this Court of jurisdiction to find that the substantive issue is properly before us" (349 U. S. at 389).

This case further resembles *Williams* v. *Georgia, supra,* in that subsequent to the proceedings below this Court decided *Wright* v. *Georgia, supra,* which conclusively vindicates petitioner's constitutional claims. See also *Patterson* v. *Alabama,* 294 U. S. 600.

A further compelling reason why review in this Court should not be precluded by Alabama's formalistic requirement, which it could have waived, is that this petition seeks a writ of certiorari to the Alabama Court of Appeals and not to the Supreme Court of Alabama. The judgment of the Court of Appeals was on the merits and was not based upon any claimed failure to comply with state procedural requirements. When certiorari is denied by the Alabama Supreme Court, this Court reviews the judgment of the Court of Appeals, the highest court to which an appeal may be taken as a matter of right. *Shuttlesworth* v. *Birmingham,* 31 U. S. Law Week 4481; *Gober* v. *Birmingham,* 31 U. S. Law Week 3385; *Anderson* v. *Alabama,* 364 U. S. 877. Certainly this Court, which could and has reviewed where the Alabama Supreme Court has given no reason for denying certiorari, also can review when the reason given is as much a matter of ritual and form (cf. *Staub* v. *Baxley,* 355 U. S. 313) as the reason given here. "[A]ssertion of federal rights, when plainly and reasonably made is not to be defeated under the name of local practice." *Davis* v. *Wechsler,* 269 U. S. 22, 24.

CONCLUSION

WHEREFORE, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

Opinion of the Alabama Court of Appeals

THE ALABAMA COURT OF APPEALS

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

OCTOBER TERM, 1962-63

6 Div. 856

FRED L. SHUTTLESWORTH

v.

CITY OF BIRMINGHAM

Appeal from Jefferson Circuit Court

CATES, *Judge*

Shuttlesworth was found guilty under §856 of the City Code of Birmingham for interfering with the chief of police in the latter's taking certain Freedom Riders into "protective custody."

Taking into protective custody we consider to mean the receiving of some one who places himself voluntarily under the protection of a peace officer.

Outside the bus station was a crowd of some 250 to 300 shouting for the police to give way, to let them take care of the Freedom Riders en route to Montgomery who, on the walkout of bus drivers, were stranded in Birmingham. The crowd was trying to press forward toward the bus loading platform. Streets were blocked—Nineteenth entirely; Seventh Avenue between Eighteenth and Nineteenth.

Shuttlesworth has argued to us that the chief of police was not in the discharge of any legal duty. *Harris* v. *Tuscaloosa*, 21 Ala. App. 392, 108 So. 768, does not apply here; nor are *People* v. *Papp*, 185 N. Y. S. 2d 907, and *White* v. *Edmunds* [1790], Peake 123, in point.

This argument can avail the appellant nothing, because his conduct was also that prohibited by §825 of the City Code which provides for the same degree of punishment as §856, §825 making it an offense against the City for any person to commit an assault.[1] *Andersen* v. *United States*, D. C. Mun. App., 132 A. 2d 155; affirmed 253 F. 2d 335. See *Duncan* v. *Jones* [1936], 1 K. B. 218.

The definition of assault is well known from the common law. In *Kennedy* v. *State*, 39 Ala. App. 676, 107 So. 2d 913, we had occasion to consider some of the elements of resisting arrest.

There may be a species of resisting an officer without at the same time committing an assault. Cf. *Dist. Col.* v.

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[1] § 825 reads: "Any person who commits an assault, or an assault and battery, upon another person, shall, on conviction, be punished as provided in section 4."

§ 856 reads: "Any person who knowingly and wilfully opposes or resists any officer of the city in executing, or attempting to make any lawful arrest, or in the discharge of any legal duty, or who in any way interferes with, hinders or prevents, or offers or endeavors to interfere with, hinder or prevent such officer from discharging his duty, shall, on conviction, be punished as provided in section 4."

§ 208 reads: "The chief of police or any policeman of the city has authority and it is his duty to make arrests for offenses against the laws of the state in all cases where such authority is now or shall hereafter be conferred on such officers by the laws of the state, and in making such arrests, whether with or without a warrant, they shall have all the authority conferred, and be subject to all the duties imposed upon such officer, by the laws of Alabama, in existence now or that may hereafter be enacted."

Little, 339 U. S. 1; *Innes* v. *Wylie* [1844], 1 Car. & Kir. 257; *Patterson* v. *Sylacauga*, 40 Ala. App. 239, 111 So. 2d 25. But under the wording of §856 opposing or interfering or hindering are alternatives to resistance, so that it is our view that an assault is an offense included in §856 in the alternative here pertinent.

Inasmuch as Shuttlesworth blocked the chief's path using words from which the intent to do so "in rudeness or in anger" could probably and rationally be inferred, there was no error in his conviction, since he could have been clearly convicted of a simple assault. The judgment below is due to be

AFFIRMED.

Price, P. J., and Johnson, J., concur in result.

Order and Judgment of the Alabama Court of Appeals

THE ALABAMA COURT OF APPEALS

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

OCTOBER TERM, 1962-63

6 Div. 856

[SAME TITLE]

February 8, 1962—TRANSCRIPT FILED

May 3, 1962

Come the parties by attorneys, and submit this cause on briefs for decision.

October , 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

Order of Denial of Rehearing

THE ALABAMA COURT OF APPEALS

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

OCTOBER TERM, 1962-63

6 Div. 856

[SAME TITLE]

November 20, 1962

It is ordered that the application be and the same is hereby overruled.

Per Curiam.

Opinion of the Supreme Court of Alabama

THE SUPREME COURT OF ALABAMA

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

OCTOBER TERM, 1962-63

6 Div. 940

[SAME TITLE]

Petition for Writ of Certiorari to Court of Appeals

MERRILL, *Justice.*

The petition for certiorari to the Court of Appeals must be stricken because it is not on transcript paper. Supreme Court Rule 32; *Ex parte Cranmore,* 129 So. 2d 688; *Ex parte Davis,* 269 Ala. 58, 110 So. 2d 306; *Accardo* v. *State,* 268 Ala. 293, 105 So. 2d 865; *McDonald* v. *Amason,* 267 Ala. 654, 104 So. 2d 719; *Ladd* v. *State,* 266 Ala. 586, 98 So. 2d 59.

PETITION FOR WRIT OF CERTIORARI STRICKEN.

Livingston, C. J., Simpson and Harwood, JJ., concur.

Orders of the Supreme Court of Alabama

THE SUPREME COURT OF ALABAMA

6th Div. 940

[SAME TITLE]

THURSDAY, DECEMBER 20, 1962

THE COURT MET PURSUANT TO ADJOURNMENT

PRESENT: ALL THE JUSTICES

PETITION FOR CERTIORARI TO THE COURT OF APPEALS

(Re: Fred L. Shuttlesworth vs. City of Birmingham)

Jefferson Circuit Court No. 22506

Comes the Petitioner and the petition for Writ of Certiorari to the Court of Appeals being submitted on briefs and duly examined and understood by the Court,

IT IS CONSIDERED AND ORDERED that the petition is hereby stricken at the cost of Petitioner for which costs let execution issue.

Opinion by Merrill, J.

Livingston, C. J., Simpson and Harwood, JJ., concur.

THE SUPREME COURT OF ALABAMA

6th Div. 940

[SAME TITLE]

THURSDAY, FEBRUARY 28, 1963

PRESENT: ALL THE JUSTICES

PETITION FOR CERTIORARI TO COURT OF APPEALS

(Re: Fred L. Shuttlesworth vs. City of Birmingham)

Jefferson Circuit Court

IT IS ORDERED, that the application for rehearing filed on January 4, 1963, be and the same is hereby overruled.

No Opinion Written on Rehearing.